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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

11 THERESA BROOKE

12 Plaintiff(s),

13 v.

14 OSIB LA DOWNTOWN PROPERTIES  
15 LLC

16 Defendant(s).

Case No.

2:23-cv-09345-WLH-AS

**ORDER TO SHOW CAUSE  
WHY THE COURT  
SHOULD  
EXERCISE  
SUPPLEMENTAL  
JURISDICTION OVER THE  
STATE LAW CLAIMS**

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19 The Complaint filed in this action asserts a claim for injunctive relief arising  
20 out of an alleged violation of the Americans with Disabilities Act (the “ADA”) and  
21 claim for damages pursuant to California’s Unruh Civil Rights Act (the “Unruh  
22 Act”), Cal. Civ. Code §§ 51-53. In the Complaint, Plaintiff requests the court  
23 exercise supplemental jurisdiction over the Unruh Act claim pursuant to  
24 28 U.S.C. § 1367.

25 The United States Supreme Court has recognized supplemental jurisdiction  
26 “is a doctrine of discretion, not of plaintiff’s right, and that district courts can  
27 decline to exercise jurisdiction over pendent claims for a number of valid  
28 reasons.” *City of Chi. v. Int’l Coll. of Surgeons*, 522 U.S. 156, 172 (1997)

(internal quotation marks and citations omitted).

The supplemental jurisdiction statute codifies these principles. After establishing that supplemental jurisdiction encompasses “other claims” in the same case or controversy as a claim within the district courts’ original jurisdiction, § 1367(a), the statute confirms the discretionary nature of supplemental jurisdiction by enumerating the circumstances in which district courts can refuse its exercise:

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if --

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

Depending on a host of factors, then -- including the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims -- district courts may decline to exercise jurisdiction over supplemental state law claims. The statute thereby reflects the understanding that, when deciding whether to exercise supplemental jurisdiction, “a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity.” *Id.* at 173 (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)); *see also Acri v. Varian Assocs.*, 114 F.3d 999, 1000 (9th Cir. 1997) (recognizing district courts have discretion to decline to exercise supplemental jurisdiction under § 1367(c)).

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1 In 2012, California adopted a heightened pleading standard for lawsuits  
 2 brought under the Unruh Act to combat the influx of baseless claims and  
 3 vexatious litigation in the disability access litigation sphere. Cal. Code Civ. Proc.  
 4 § 425.50. The stricter pleading standard requires a plaintiff bringing construction-  
 5 access claims<sup>1</sup> to file a verified complaint alleging specific facts concerning the  
 6 plaintiff's claim, including the specific barriers encountered or how the plaintiff  
 7 was deterred and each date on which the plaintiff encountered each barrier or  
 8 was deterred. *See id.* § 425.50(a). California also imposed a "high-frequency  
 9 litigant fee" in 2015 in response to the "special and unique circumstances"  
 10 presented by certain plaintiffs and law firms filing an outsized number of Unruh  
 11 Act lawsuits. Cal. Gov't Code § 70616.5.

12 In recognition of California's efforts to reduce the abuse of California's  
 13 disability access laws, district courts within the state have determined that the  
 14 interests of fairness and comity counsel against exercising supplemental jurisdiction  
 15 over construction-access claims brought under the Unruh Act. *See, e.g., Schutza*  
 16 *v. Cuddeback* 262 F. Supp. 3d 1025, 1031 (S.D. Cal. 2017) ("[T]he Court finds it  
 17 would be improper to allow Plaintiff [a high frequency litigant] to use federal court  
 18 as an end-around to California's pleading requirements. Therefore, as a matter of  
 19 \_\_\_\_\_

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 21 <sup>1</sup> "Construction-related accessibility claim" means any civil claim in a civil action  
 22 with respect to a place of public accommodation, including, but not limited to, a  
 23 claim brought under [Cal. Civ. Code] Section 51, 54, 54.1, or 55, based wholly or  
 24 in part on an alleged violation of any construction-related accessibility standard, as  
 25 defined in paragraph (6)." Cal. Civ. Code § 55.52(a)(1). "Construction-related  
 26 accessibility standard" means a provision, standard, or regulation under state or  
 27 federal law requiring compliance with standards for making new construction  
 28 and existing facilities accessible to persons with disabilities, including, but not  
 limited to, any provision, standard, or regulation set forth in Section 51, 54, 54.1,  
 or 55 of this code, Section 19955.5 of the Health and Safety Code, the California  
 Building Standards Code (Title 24 of the California Code of Regulations), the  
 federal Americans with Disabilities Act of 1990 (Public Law 101-336;  
 42 U.S.C. Sec. 12101 et seq.), and the federal Americans with Disabilities Act  
 Accessibility Guidelines (Appendix A to Part 36, of Title 28, of the Code of  
 Federal Regulations)." Cal. Civ. Code § 55.52(a)(6).

1 comity, and in deference to California's substantial interest in discouraging  
2 unverified disability discrimination claims, the Court declines supplemental  
3 jurisdiction over Plaintiff's Unruh Act claim.").

4 In light of the foregoing, the Court ORDERS Plaintiff to show cause in writing  
5 why the court should exercise supplemental jurisdiction over the Unruh Act claim  
6 and any related state law claims. *See* 28 U.S.C. § 1367(c). In responding to this  
7 Order to Show Cause, Plaintiff shall identify the amount of statutory damages  
8 Plaintiff seeks to recover. Plaintiff and his or her counsel also shall support their  
9 responses to the Order to Show Cause with declarations, signed under penalty  
10 of perjury, providing all facts necessary for the court to determine if they satisfy  
11 the definition of a "high-frequency litigant" as provided by Cal. Code Civ. Proc.  
12 § 425.55(b)(1) & (2).

13 Plaintiff shall file a Response to this Order to Show Cause within fourteen  
14 (14) days of this Order. Failure to timely or adequately respond to this Order to  
15 Show Cause may result in the court declining to exercise supplemental jurisdiction  
16 over the Unruh Act claim and any related state law claims and dismissing such  
17 claim or claims without further notice, pursuant to 28 U.S.C. § 1367(c). The  
18 Court may set a hearing on the Order to Show Cause after reviewing the  
19 parties' responses, if necessary.

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21 **IT IS SO ORDERED.**

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24 Dated: November 8, 2023



25  
26 HON. WESLEY L. HSU  
UNITED STATES DISTRICT JUDGE  
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